

The Department of Community Planning & Development

City Hall, Lynchburg, VA 24504 434-455-3900

To: Planning Commission

From: Planning Division

Date: December 1, 2004

Re: Zoning Ordinance Amendment – Zoning Administrator

I. PETITIONER

City of Lynchburg, P.O. Box 60, Lynchburg, VA 24504

Representative: Tom Martin, AICP, City Planner, Planning Division, P.O. Box 60, Lynchburg, VA 24504

II. LOCATION

Not Applicable

Property Owners: Not Applicable

III. PURPOSE

The purpose of the Zoning Ordinance Amendment is to provide for the appointment of a Zoning Administrator who shall have the responsibility for the administration and enforcement of the Zoning Ordinance.

IV. SUMMARY

- The Zoning Ordinance Amendments would provide for the appointment of a Zoning Administrator.
- The appointment of a Zoning Administrator would not require the hiring of additional staff.
- The proposed Zoning Ordinance amendments are consistent with Chapter 15.2-2286 of the Code of Virginia.

The Planning Division recommends approval of the Zoning Ordinance Amendment.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** One of the key elements in implementing the City's Comprehensive Plan is the Zoning Ordinance. The *Comprehensive Plan 2002 – 2020* lists several areas of the Zoning Ordinance that needs to be revised. (pg 5.10)
2. **Zoning.** The proposed revisions would allow for the appointment of a Zoning Administrator and clarify the responsibility for enforcement of the Zoning Ordinance.
3. **Board of Zoning Appeals (BZA).** Not Applicable.
4. **Surrounding Area.** Not Applicable.
5. **Site Description.** Not Applicable.
6. **Proposed Use of Property.** Not Applicable.
7. **Traffic and Parking.** Not Applicable.
8. **Storm Water Management.** Not Applicable.
9. **Impact.** Chapter 15.2-2286 of the Code of Virginia allows localities to appoint a Zoning Administrator who shall have the responsibility for the administration and enforcement of the

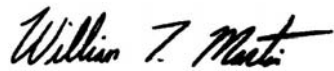
Zoning Ordinance. The City's Zoning Ordinance and Comprehensive Plan make references to a Zoning Administrator, however the Zoning Ordinance does not provide for the appointment of such an official. The Zoning Ordinance currently states that the administration and enforcement of the Zoning Ordinance shall be the responsibility of the Division of Inspections. Due to organizational changes within the Department of Community Planning & Development this has not been the case for several years. Allowing for the appointment of a Zoning Administrator will not require the hiring of new staff. Most likely the City Manager will appoint one of the existing Zoning Officials as Administrator. This City staff person will make final determinations on all administrative zoning issues.

10. **Technical Review Committee.** Not Applicable

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to the City Council approval of amending Section 35.1-12, General, to provide for the appointment of a Zoning Administrator who shall have the responsibility for the administration and enforcement of the Zoning Ordinance.

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. Bruce A. McNabb, Director of Public Works
Mr. R. Douglas Dejarnette, Fire Marshal
Mr. Robert Drane, Building Commissioner
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Keith Wright, Neighborhood Program Coordinator
Mr. Robert S. Fowler, Zoning Official

VII. ATTACHMENTS

- 1. Zoning Ordinance Amendments**
(see attached Ordinance)
- 2. Chapter 15.2-2286 of the Code of Virginia**
(see attached code section)

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-12 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF THE CITY'S ZONING ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 35.1-12 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 35.1-12. General.

(a) Development permission.

(1) Certificate of occupancy. No lot, building or structure shall hereafter be used by any person or organization until such person or organization has obtained from the City of Lynchburg an occupancy permit specifying the proposed use, the extent of the property and such other information as shall be determined by the city council to be necessary to the effective operation of these and other duly enacted city regulations.

(2) Building permit. No building or structure or part thereof shall be erected, enlarged or altered by any person or organization until such person or organization has met all site plan requirements and has obtained from the City of Lynchburg a building permit specifying the use and method of construction of such building, structure or alteration, including such information as is determined by the city council to be necessary to the effective operation of these regulations.

(b) Conformance to building and occupancy permits.

(1) Occupancy permit. The use of any lot, building or structure shall hereafter conform to the terms of the occupancy permit duly issued for that lot, building or structure and to the regulations of this ordinance.

(2) Building permit. The construction, design and use of every building, structure or alteration shall conform to the terms of the building permit duly issued for that building, structure or alteration.

(c) Conformance of building and occupancy permits to city ordinances. No building or occupancy permit shall be issued which is not in conformance with this ordinance and other pertinent regulations of the City of Lynchburg.

(d) Zoning Administrator. The administration and enforcement of the zoning ordinance shall be the responsibility of the zoning administrator. The zoning

administrator shall be appointed by the city manager and in administering and enforcing the zoning ordinance the zoning administrator shall have all of the responsibilities, duties and powers set forth in Title 15.2, Chapter 22, Article 7, and in particular, Section 15.2-2286 of the Code of Virginia, and any successors or amendments thereto. The City shall also employ such zoning officials as may be necessary to assist the zoning administrator in the administration and enforcement of the zoning ordinance.

~~(ed)~~ Division of inspections. ~~The administration and enforcement of this zoning ordinance shall be the responsibility of the division of inspections.~~ The division of inspections shall receive applications for building and occupancy permits and other permits specified by this ordinance and shall administer the review and approval of such permits under these regulations. The division shall also ensure the conformance of building and use permit conditions to all applicable city regulations.

(fe) Procedure for review and issuance of development permission. Application for any permit regulated by this ordinance shall be made to the division of inspections. If the division of inspections finds that the requested permission is in conformance with the regulations for uses permitted by right or as accessory uses in this ordinance and with other applicable city regulations, the division of inspections shall issue a building or occupancy permit as requested. If the requested use or construction requires site plan review, a conditional use permit, planned unit development or any other special permission described in this article, the division of inspections shall transmit the application to the division of planning.

~~(gf)~~ Planning commission. The planning commission shall review and recommend action on conditional use permits and specified site plan review, including that for planned unit developments, and shall make determinations on the appropriateness to zoning districts of uses not listed specifically in this ordinance. The planning commission shall also recommend action to the city council on amendments to this ordinance, initiate action on applications for planned unit developments and perform other actions for the city council relating to this ordinance.

~~(hg)~~ City council. The city council has primary responsibility for the enactment and amendment of this ordinance.

~~(ih)~~ The board of zoning appeals.

(1) Organization. The board of zoning appeals shall consist of five (5) residents of the City of Lynchburg, appointed by the circuit court of the City of Lynchburg. Their terms of office shall be five (5) years, with the term of one (1) member expiring in each year. The secretary of the board shall notify the court at least thirty (30) days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to

succeed themselves. Members of the board shall hold no other public office in the city except that one (1) may be a member of the planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

The board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall not be less than a majority of all members of the board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the City of Lynchburg, Virginia, and general laws of the commonwealth for the conduct of its affairs. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the city council at least once each year.

Within the limits of funds appropriated by the city council, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after hearings held after at least a fifteen (15) day notice.

(2) Powers and duties:

- a. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this ordinance. No such appeal shall be heard by the board except after notice and hearing as provided by Section 35.1-19.
- b. To authorize upon appeal or original application in specific cases such variance as defined in Section 35.1-13(a) from the terms of this ordinance as will not be contrary to the public interest when owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship. Such authorization shall be in conformance with Section 35.1-13 of this chapter.
- c. To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearings with notice as required by Section 35.1-19, the board may interpret the official zoning map in such a way as to carry out the intent and purpose of the ordinance for the particular section or district in question as specified in Section 35.1-6. The board shall not have the power, however, to rezone property or to change the locations of district boundaries as established by ordinance.

No provisions of this section shall be construed as granting the board the power to rezone property.

d. To grant upon written application, in restricted areas, conditional use permits, revocable upon thirty (30) days' notice from the zoning administrator, for the following uses only:

1. The use of an open lot for storage purposes not permitted by this ordinance; provided no building or structure is to be erected other than a small office or quarters for a watchman;
2. The use of any building or structure, existing on the effective date of this chapter, for business or industrial purposes; provided that there will not be any exterior structural alterations or additions to such building or structure; and provided further, that only such mechanical equipment or machinery may be used in connection with the use of such lot, building or structure as deemed appropriate by the board. The board may, at its discretion, authorize a sign which may be necessary to identify any business or industrial use for which a conditional use permit is approved in accordance with the provisions of this section. A conditional use permit shall be granted only to the person(s) who will actually conduct the business or industrial use for which said permit is sought, and such permit shall not be transferable.

e. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest and may require a guarantee or bond, payable to the City of Lynchburg, in such amount and for such period of time as the board may designate to ensure that the conditions imposed are being and will continue to be complied with.

f. No such permit may be granted except after notice and hearing as provided in Section 35.1-19.

(3) Rules, hearings, records and minutes. The board shall adopt from time to time such rules and regulations as it may deem necessary to interpret and carry into effect the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or, in his absence, the vice chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. A copy of the minutes of each meeting shall be sent to the secretary of the planning commission. The presence of three (3) members shall constitute a quorum. The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision or determination of the inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance, or to affect any variation in this ordinance.

(j) Fees for development permission. In order to cover costs by the City of Lynchburg incidental to the review, hearing and reporting of the processing of development permissions, the following fees shall be required to accompany applications for such permissions:

(1) Application for development permission (building permit) of a use permitted by right is as per fee schedule of the city building code.

(2) Application for a conditional use permit to the Board of Zoning Appeals or for a variance shall be accompanied by a check payable to the City of Lynchburg for each petition submitted in the amount set forth in the fee schedule adopted by city council.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: _____
Clerk of Council

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § [15.2-2201](#), to the general regulations in any district.
2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.
3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of any city with a population between 260,000 and 264,000 may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of any city with a population between 200,000 and 210,000 may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § [15.2-2206](#).

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § [15.2-2311](#); and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § [15.2-2307](#). Notwithstanding the provisions of § [15.2-2311](#), a zoning ordinance may prescribe an appeal period of less than thirty days, but not less than ten days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a variance from any building setback requirement contained in the zoning ordinance if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the variance. Prior to the granting of a variance, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for variance, and an opportunity to respond to the request within twenty-one days of the date of the notice. If any adjoining property owner objects to said request in writing within the time specified above, the request shall be transferred to the Board of Zoning Appeals for decision.

The zoning administrator shall respond within ninety days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not less than \$100 nor more than \$1,500.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body, (ii) by motion of the local planning commission, or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed twelve months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the

event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § [15.2-2201](#).

10. For the administration of incentive zoning as defined in § [15.2-2201](#).

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for the clustering of single-family dwellings so as to preserve open space.

a. A locality may, at its option, provide in its zoning or subdivision ordinance standards, conditions and criteria for clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space and compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality determines, at its option, to provide for clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different zoning area within the locality.

If proposals for clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt developments of two acres or less from the provisions of this subdivision.

b. Additionally, in any zoning or subdivision ordinance adopted pursuant to subdivision A 12, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide in its zoning or subdivision ordinance standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions and criteria, it shall be permitted by right and approved administratively by the locality staff in the same manner provided in subdivision A 12 a, or (ii)

approve the increased density development upon approval of a special exception, special use permit, conditional use permit or rezoning.

c. Any locality that provides for clustering of single-family dwellings and preservation of open space upon approval of a special exception, special use permit, conditional use permit or rezoning shall no later than July 1, 2004, amend its applicable land use ordinance to comply with the provisions of subdivision A 12. Any land use provisions for clustering of single-family dwellings and preservation of open space adopted after the effective date of this act shall comply with subdivision A 12. Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local government land use ordinance in affect as of January 1, 2002, that provides for the clustering of single-family dwellings and preservation of open space development by right without requiring either a special exception, special use permit, conditional use permit or other discretionary approval may remain in effect at the option of the locality.

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.

(Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, cc. 529, 543, 587; 1998, c. 385; 1999, c. 792; 2000, cc.